

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-01789-smb

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5 SECURITIES INVESTOR PROTECTION CORPORATION,

6 Plaintiff,

7 v.

8 BERNARD L. MADOFF INVESTMENT SECURITIES, LLC, et al.,

9 Defendants.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 December 20, 2017

17 10:04 AM

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21 B E F O R E :

22 HON STUART M. BERNSTEIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: FRANCES FERGUSON

1 HEARING re Application for Interim Professional Compensation
2 Twenty-Fifth Application Of Trustee And Baker & Hostetler
3 LLP For Allowance Of Interim Compensation For Services
4 Rendered And Reimbursement Of Actual And Necessary Expenses
5 Incurred From April 1, 2017 Through July 31, 2017 for Baker &
6 Hostetler, L.L.P., Trustee's Attorney, period: 4/1/2017 to
7 7/31/2017, fee: \$33,782,780.11, expenses: \$412,517.60.

8
9 HEARING re Application for Interim Professional Compensation
10 Application Of Browne Jacobson, LLP As Special Counsel to
11 The Trustee For Allowance Of Interim Compensation For
12 Services Rendered And Reimbursement Of Actual And Necessary
13 Expenses Incurred From April 1, 2017 Through July 31, 2017
14 for Browne Jacobson, LLP, Special Counsel, period: 4/1/2017
15 to 7/31/2017, fee: \$750,288.54, expenses: \$19,712.12.

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17 HEARING re Application for Interim Professional Compensation
18 Application Of Cochran Allan As Special Counsel To The
19 Trustee For Allowance Of Interim Compensation For Services
20 Rendered From April 1, 2017 Through July 31, 2017 for
21 Cochran Allan, Special Counsel, period: 4/1/2017 to
22 7/31/2017, fee: \$1,232.55, expenses: \$0.

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1 HEARING re Application for Interim Professional Compensation
2 Application Of Eugene F. Collins As Special Counsel To The
3 Trustee For Allowance Of Interim Compensation For Services
4 Rendered And Reimbursement Of Expenses Incurred From April
5 1, 2017 Through July 31, 2017 for Eugene F. Collins, Special
6 Counsel, period: 4/1/2017 to 7/31/2017, fee: \$9,108.41,
7 expenses: \$19.87.

8
9 HEARING re Application for Interim Professional Compensation
10 Application Of Graf & Pitkowitz Rechtsanwälte GmbH As
11 Special Counsel To The Trustee For Allowance Of Interim
12 Compensation For Services Rendered And Reimbursement Of
13 Expenses Incurred From April 1, 2017 Through July 31, 2017
14 for Graf Pitkowitz Rechtsanwälte GmbH, Special Counsel,
15 period: 4/1/2017 to 7/31/2017, fee: \$2,759.84, expenses:
16 \$230.61.

17
18 HEARING re Application for Interim Professional Compensation
19 Application Of Higgs & Johnson (Formerly Higgs Johnson
20 Truman Bodden & Co.) As Special Counsel To The Trustee For
21 Allowance Of Interim Compensation For Services Rendered And
22 Reimbursement Of Expenses Incurred From April 1, 2016
23 Through July 31, 2017 for Higgs & Johnson, Special Counsel,
24 period: 4/1/2016 to 7/31/2017, fee: \$41,097.29, expenses:
25 \$142.64.

1 HEARING re Application for Interim Professional Compensation
2 Final Application Of Osborne & Osborne, P.A. As Special
3 Counsel To The Trustee For Reimbursement Of Fees Previously
4 Held Back By SIPC for Osborne & Osborne, P.A., Special
5 Counsel, period: 4/1/2017 to 7/31/2017, fee: \$120.17,
6 expenses: \$0.

7
8 HEARING re Application for Interim Professional Compensation
9 Application Of SCA Creque As Special Counsel To The Trustee
10 For Allowance Of Interim Compensation For Services Rendered
11 And Reimbursement Of Expenses Incurred From April 1,2017
12 Through July 31,2017 for SCA Creque, Special Counsel,
13 period: 4/1/2017 to 7/31/2017, fee: \$19437.01, expenses: \$0.

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15 HEARING re Application for Interim Professional Compensation
16 Application Of Schiltz & Schiltz As Special Counsel To The
17 Trustee For Allowance Of Interim Compensation For Services
18 Rendered And Reimbursement Of Expenses Incurred From April
19 1, 2017 Through July 31,2017 for Schiltz & Schiltz, Special
20 Counsel, period: 4/1/2017 to 7/31/2017, fee: \$32,096.72,
21 expenses: \$2,086.29.

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1 HEARING re Application for Interim Professional Compensation
2 Application Of Soroker Agmon Nordman As Special Counsel To
3 The Trustee For Allowance Of Interim Compensation For
4 Services Rendered And Reimbursement Of Expenses Incurred
5 From April 1, 2017 Through July 31, 2017 for Soroker Agmon
6 Nordman, Special Counsel, period: 4/1/2017 to 7/31/2017,
7 fee: \$539,293.00, expenses: \$9,804.44.

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9 HEARING re Application for Interim Professional Compensation
10 Application Of Triay Stagnetto Neish As Special Counsel To
11 The Trustee For Allowance Of Interim Compensation For
12 Services Rendered From December 1, 2016 Through July 31,
13 2017 for Triay Stagnetto Neish, Special Counsel, period:
14 12/1/2016 to 7/31/2017, fee: \$449.83, expenses: \$33.50.

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16 HEARING re Application for Interim Professional Compensation
17 Application Of UGGC & Associés As Special Counsel To The
18 Trustee For Allowance Of Interim Compensation For Services
19 Rendered From April 1, 2017 Through July 31, 2017 for UGGC &
20 Associés Special Counsel, period: 4/1/2017 to
21 7/31/2017, fee: \$112756.77, expenses: \$0.

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1 HEARING re Application for Interim Professional Compensation
2 Application Of Werder Vigano As Special Counsel To The
3 Trustee For Allowance Of Interim Compensation For Services
4 Rendered From April 1, 2017 Through July 31, 2017 for Werder
5 Vigano, Special Counsel, period: 4/1/2017 to 7/31/2017, fee:
6 \$501.53, expenses: \$0.

7
8 HEARING re Application for Interim Professional Compensation
9 / Twenty-Fourth Application of Windels Marx Lane &
10 Mittendorf, LLP for Allowance of Interim Compensation for
11 Services Rendered and Reimbursement of Actual and Necessary
12 Expenses Incurred from April 1, 2017 Through July 31, 2017
13 for Windels Marx Lane & Mittendorf, LLP, Special Counsel,
14 period: 4/1/2017 to 7/31/2017, fee: \$1,931,328.50, expenses:
15 \$73,421.18.

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17 HEARING re Application for Interim Professional Compensation
18 Application Of Williams, Barristers & Attorneys As Special
19 Counsel To The Trustee For Allowance Of Interim Compensation
20 For Services Rendered From April 1, 2017 Through July 31,
21 2017 for Williams, Barristers & Attorneys, Special Counsel,
22 period: 4/1/2017 to 7/31/2017, fee: \$284781.53, expenses:
23 \$0.

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1 HEARING re Application for Interim Professional Compensation
2 Application Of Young Conaway Stargatt & Taylor, LLP As
3 Special Counsel To The Trustee For Allowance Of Interim
4 Compensation For Services Rendered And Reimbursement Of
5 Expenses Incurred From April 1, 2017 Through July
6 31, 2017 for Young Conaway Stargatt & Taylor, LLP, Special
7 Counsel, period: 4/1/2017 to 7/31/2017, fee: \$38,068.56,
8 expenses: \$631.60.

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 BAKER HOSTETLER

4 Attorneys for the Trustee BLMIS

5 45 Rockefeller Plaza

6 New York, NY 10111

7

8 BY: DAVID J. SHEEHAN

9

10 SECURITIES INVESTOR PROTECTION CORPORATION

11 1667 K. Street, N.W., Suite 1000

12 Washington, D.C. 20006

13

14 BY: KEVIN H. BELL

15

16 ALSO PRESENT TELEPHONICALLY:

17

18 PATRICK MOHAN

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1 P R O C E E D I N G S

2 MR. SHEEHAN: Good morning, Your Honor. How are
3 you today?

4 THE COURT: Very well, thank you.

5 MR. SHEEHAN: Good. This is the return date of
6 the 25th application for interim compensation by the
7 Trustee, his counsel, and an assortment of other firms who
8 have supported the Trustee throughout these efforts.

9 In the past, I've talked about some of the efforts
10 that are ongoing, but what I want to highlight this morning
11 is something that did take place this week was a filing,
12 which I'm sure Your Honor is aware of. We will be
13 distributing close to \$600 million as a result of the recent
14 settlements in Thema International, Thema Wise, and -- what
15 was the other one?

16 MAN 1: Lagoon.

17 MR. SHEEHAN: Lagoon. I never remember Lagoon
18 anyway. But what brings us up to -- with the reserves, it
19 gets us up to 62-1/2 cents -- 63-1/2 cents. If you take the
20 reserves out against the 17.5, the original 17.5, we're at
21 73 cents. So, but you can't ignore the reserves, so we
22 operate with the 63-cent number.

23 I think this late in the game to be seeing that
24 kind of an outcome still taking place nine years into the
25 litigation, I think is a testament to the work of all the

1 people that I'm representing here today in connection with
2 this fee application.

3 It is, you know, Oren Warshovsky and his team did
4 the work on those three cases that settled. But they were
5 not alone in terms of all the work that went into getting us
6 to where we are.

7 Your Honor, during one of our recent hearings
8 saying I feel like I'm getting things a piece at a time, and
9 I think that's absolutely true. And I'd go back to the
10 office and think to myself, how can we present to the Court
11 without being ridiculous all the things that stand behind
12 what we do every day, which are obviously very apparent to
13 our adversaries, at least to some, who are represented, you
14 know, by major law firms as I've pointed out in the past.

15 And the settlements that we've arrived at are
16 arrived at after a very, very thorough analysis of all the
17 facts, all the evidence, and resulting in the settlements
18 that we're still getting. And I think it is a tribute to
19 the relentlessness, if you will.

20 Some argue, you know, that the fees here are
21 enormous, but -- and the fees on the other side
22 collectively, I think, would add up to a lot more than what
23 we're spending. I think we have to counter a lot of
24 activity. For example, the three biggest numbers that you
25 have today in the foreign applications, two of those are

1 associated with what's going on in Kingate. Because Kingate
2 now, you know, that which is left of Kingate, the funds
3 themselves, are being and continue to be heavily litigated
4 and in discovery.

5 So the number for the fellows in England, Barron
6 Jacobson and the fellows at Williams Barristers in Bermuda
7 are fairly significant because a lot of that activity is
8 taking place in Bermuda, where we are still continuing to
9 fight the battle to get documents, which under the English
10 system, aren't as readily available as in our cross.

11 So that's the trenches, and we're in there and we
12 don't back off. And the same thing's true, obviously with
13 Israel and what's going on there. There's a tremendous
14 battle between the parties there, a lot of litigation,
15 various motions. A recent motion to amend that was
16 partially granted, and there will be an interlocutory appeal
17 from the balance of it where we want to add certain counts.

18 So I think the point being this, is that the wide
19 range of activities that take place across all the firms
20 that we have, together with the work done by Baker on a
21 daily basis, is the -- is representative of what brings
22 about the results that we've seen most recently.

23 Now overall, we've obviously collected a great
24 deal of money, far beyond what anyone ever thought we would
25 get, and certainly far beyond anything I thought we would

1 get. But I think it is a result of two things: one is that
2 there is a, I must say, among the team members almost a
3 crusade that we are looking to always get the money back to
4 give it to the individuals, people that you almost never
5 hear from, and that is the people who get paid. You know,
6 they don't come here.

7 As a matter of fact, at the very beginning, they
8 would be castigated by the winners who are actually
9 supporting the Trustee, so they've gone quiet. It's kind of
10 an interesting phenomenon.

11 But the thing that's occurring now is that I think
12 we're seeking in the next year or so the end. You know, we
13 are at the beginning of the end, as it were. And I think
14 the active litigation that's still going on, as well as
15 obviously the appeal that we have in the Circuit, is going
16 to be very telling in terms of whether the case lasts
17 another two years or another four years, depending on the
18 appeal itself.

19 THE COURT: Do you have an argument date for the
20 extra (indiscernible) of it?

21 MR. SHEEHAN: No. Our brief is due January 10th;
22 theirs is due, I think it's 60 days thereafter. I don't
23 think we're going to have an argument not until probably the
24 early fall, given my experience in the past with Circuit and
25 how fast it moves on things. On that equity, we even had

1 expedited order, and it still took 13 months to get an
2 argument date, so it just doesn't move that quickly.

3 In any event, but, obviously, I always speak
4 highly of our co-counsel, and I think of them as our co-
5 counsel at Windels Marx, because we worked with them closely
6 and they assist us in a lot of endeavors, not just in
7 conflict stuff, but, for example, in the appeal. The extra
8 territoriality appeal is a very, very difficult appeal. We
9 brought them in to assist us analyzing these issues, trying
10 to bring clarity to our understanding of all the different
11 cases that are out there, as Your Honor well knows, having
12 written the opinion. So they do an amazing job for us, and
13 we rely upon them a great deal.

14 But the same can be said of virtually all the
15 other firms, and that's another factor here. I think when
16 everyone saw that we were in all the jurisdictions that were
17 necessary and SIPC supported that, so we could go into
18 Austria and get the documents or go into France and get the
19 documents and do things that we did in Switzerland, which
20 (indiscernible). We took actually a deposition in
21 Switzerland, which is, like, extraordinary. Nobody gets to
22 do that in Switzerland.

23 But we've done that, and we know that we're not
24 going to back off. And the relentlessness of it, I think,
25 has paid dividends, even through -- as you saw recently, the

1 recent settlements.

2 So in light of those activities, many of which
3 occurred during the reporting period, of course, I would
4 submit that our applications for approval by the Court
5 today.

6 THE COURT: Thank you.

7 MR. BELL: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. BELL: Two weeks ago, you asked me a
10 question. I do have the answer. It's 17,158 days.

11 THE COURT: How many hours?

12 MR. BELL: Mr. Nisselson asked you that, and I
13 figured --

14 THE COURT: All used to work together.

15 MR. BELL: I may go, I realized that and I said,
16 I didn't have the honor of being an Assistant U.S. Attorney.
17 But if you do multiply 1440 times those number of days, we
18 can get the answer. I turned my machine off because I
19 didn't want it ringing.

20 THE COURT: It's not necessary, Mr. Bell. Go
21 ahead.

22 MR. BELL: So when Mr. Nisselson said hours, I
23 said, oh my God, the judge is going to ask me the same
24 thing. I'll get back to you.

25 THE COURT: Okay.

1 MR. BELL: This has been a long journey. Today
2 is the 3,296th day. And on January 31, you will hear a
3 motion that Mr. Sheehan talked about and you will see in the
4 papers that we will be able to get 47 more individuals to a
5 full 100 percent satisfaction with this motion, leaving 879
6 souls who still don't have 100 percent satisfaction.

7 If you have a claim, cash in/cash out for
8 \$1,375,000, you have been fully paid. 3,296 days ago, when
9 the commission called us, I told the president and general
10 counsel of SIPC that we would get 100 percent back. I do
11 believe we will get to that number.

12 There are a number of pieces of litigation you
13 will be getting later today, a five-page letter which will
14 walk you through from 17,158 days ago. The mandate from
15 Congress within our statute of amending the 15(b) of the
16 1934 Act, Securities & Exchange Act of 1934 and requiring
17 the Commission to promulgate as they did in June of 1972,
18 Rule 15c3-3, and commented with that the SEC tightened up
19 their other rule, then that capital rule 15c3-1. But I'll
20 let you read what we have written, and we will include an
21 affidavit from me where you'll have six documents which will
22 be foundational to everything we say.

23 THE COURT: What does this relate to?

24 MR. BELL: Hmm?

25 THE COURT: What does all this relate to?

1 MR. BELL: What you asked for, your question of
2 two weeks. You had two questions --

3 THE COURT: Oh, oh, yes, yes.

4 MR. BELL: -- two weeks ago. And so, we have --
5 we are giving you a very thorough analysis, which is even
6 with the guidance of the people in Division of Trading and
7 Markets. I go back, and they make me stand up and they say,
8 you forgot everything we told you, and I learn again.

9 THE COURT: It's a sign of age.

10 MR. BELL: Yeah, well, when you get the whole
11 experts at the Commission telling you how important it is.
12 The conversation started on December 11, 2008 when they
13 called up, and my question was, wasn't the money locked up,
14 \$20 million or \$20 billion should have been locked up under
15 the 15c3-3 rules, whether here in the United States or if
16 you allow foreign safe harbors for customer property that
17 the Commission allows.

18 Well, I'm here about fee applications.

19 THE COURT: You just told me there's going to be
20 100 percent, so doesn't have to -- the estate itself telling
21 you.

22 MR. BELL: I know, Your Honor.

23 THE COURT: Don't (indiscernible).

24 MR. BELL: (indiscernible) overly optimistic.

25 THE COURT: You just told me about

1 (indiscernible).

2 MR. BELL: Your Honor, there are major law firms
3 on the other side that have not seen the light.

4 THE COURT: Mr. Bell, you just told me that you
5 believe that the net losers will recover 100 percent.

6 MR. BELL: But --

7 THE COURT: Let me just finish.

8 MR. BELL: -- I --

9 THE COURT: Let me just finish. That makes the
10 estate solvent. And how does that affect the recommendation
11 regarding the fees?

12 MR. BELL: Maybe six years from now.

13 THE COURT: Well, but still.

14 MR. BELL: I am overly optimistic of us getting
15 there. I said 100 percent from day one. There have been
16 people on "60 Minutes" who are in this room who said 10 to
17 15 percent when asked in '09, you know. They're starting to
18 see what I saw, that if you litigate hard and you're
19 correct, you will get there. But currently, we are not
20 there.

21 And, therefore, the statute requires me to say to
22 you that we have thoroughly vetted the Trustee's application
23 and the application of all the others. And as you will see
24 in Paragraph 3 of SIPC's recommendation on Baker, there has
25 been a reduction of about 14.53 percent of the fees they

1 would charge a normal client to the amount that's
2 recommended to be paid in -- that's Paragraph 5 of the Baker
3 application. In Paragraph 3 of the Windels application,
4 it's a reduction of 16.43 percent from their normal billing
5 rates.

6 Because under the statute, Section 78eee(b)(5)(A),
7 at this moment in time, there is not a likelihood, other
8 than winning at the Second Circuit.

9 THE COURT: You just told me there was a
10 likelihood.

11 MR. BELL: Well, if you could guarantee me, Your
12 Honor.

13 THE COURT: What does the statute say though about
14 the force of your recommendation in light of the financial
15 condition of the Debtor?

16 MR. BELL: I brought the statute.

17 THE COURT: Okay, good.

18 MR. BELL: It indicates in which it was allowed
19 to be paid by SIPC without a reasonable expectation -- and
20 everybody tells me I'm totally unreasonable all the time --
21 of recoupment, there are as provided in this chapter and
22 there is no difference between the amount requested and the
23 amounts recommended, the Court shall award the amounts
24 recommended by SIPC.

25 THE COURT: If you've told me there's not only a

1 reasonable expectation, there's a likelihood that the estate
2 is solvent. Maybe I'll ask Mr. Sheehan how to respond.

3 MR. BELL: I think the odds in Las Vegas on us
4 winning in the Second Circuit after Your Honor's opinion,
5 which affirmed or utilized Judge Rakoff's opinion, would not
6 be high on the likelihood of us winning. It'd be like the
7 Giants winning the Super Bowl this year.

8 THE COURT: Still possible.

9 MR. BELL: Reasonable expectation, and that's the
10 guidance that we can discuss, Your Honor, if you wish.

11 THE COURT: Yes, sir.

12 MR. SHEEHAN: I think in the context of the
13 statute and looking at what's in front of us, as opposed to
14 what's going on in Las Vegas, is that, you know, there's a
15 tremendous amount of money, as Your Honor noted, riding on
16 the ET decision. Given, you know, I would never in a
17 hundred years try to predict what the Second Circuit's going
18 to do there. And with the loss of that, there'll be
19 absolutely no chance to getting to 100 percent.

20 So, you know, I don't think it's reasonable at
21 this point to assume that we're going to get there under any
22 circumstances. And even if we lose or even if we win, you
23 still have to win those cases. Your Honor's been around
24 this case long enough to know that even though we've had a
25 very nice track record and got some real results, there's

1 been other cases where it hasn't quite worked out the way we
2 would hope.

3 And some of that emanates from the fact that the
4 money isn't there, so it wouldn't necessarily even be a
5 question of liability. So that I think those variables
6 which are the very real variables that we deal with every
7 day would preclude a finding that's reasonable to expect
8 that the general estate would come to fruition.

9 MR. BELL: I adopt his --

10 THE COURT: Oh, I was going to ask you if you
11 disagreed with him.

12 MR. BELL: Most times, I do, but this time, I
13 will take Mr. Sheehan's saving words. Your Honor, and so,
14 therefore, SIPC would ask you to enter an order approving
15 these fees.

16 THE COURT: Thank you.

17 MR. BELL: Thank you, Your Honor.

18 THE COURT: Based upon SIPC's recommendation and
19 notwithstanding Mr. Bell's optimism, I don't think it's
20 reasonably likely, given the fact that nine years have now
21 passed, the money is probably getting harder to get. And at
22 best, you're three-quarters of the way there that you're
23 going to get that other quarter in the next however many
24 years. So I don't think it's reasonably likely that the
25 estate will be solvent, unless something happens, which

1 itself is not reasonably likely.

2 So under the circumstances, I'll grant the fee
3 applications in accordance with the statute, and you can
4 submit the order.

5 MR. SHEEHAN: Thank you very much, Your Honor.

6 MR. BELL: Thank you, Your Honor.

7 (Whereupon these proceedings were concluded at
8 10:20 AM)

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I N D E X

RULINGS

Page Line

Fee Applications Granted 21 2

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya

Ledanski Hyde

Digitally signed by Sonya Ledanski
Hyde
DN: cn=Sonya Ledanski Hyde, o, ou,
email=digital@veritext.com, c=US
Date: 2017.12.21 15:53:43 -05'00'

Sonya Ledanski Hyde

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Mineola, NY 11501

Date: December 21, 2017